

House Engrossed  
**FILED**  
**KEN BENNETT**  
**SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Forty-ninth Legislature  
First Regular Session  
2009

CHAPTER 85

## **HOUSE BILL 2333**

AN ACT

AMENDING SECTIONS 14-1201, 14-2903, 14-2907 AND 14-3715, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 3, ARTICLE 9, ARIZONA REVISED STATUTES, BY ADDING SECTION 14-3916; AMENDING SECTIONS 14-7403, 14-10103, 14-10105, 14-10108, 14-10111, 14-10407 AND 14-10410, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 11, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 14-10418; AMENDING SECTIONS 14-10504, 14-10505 AND 14-10818, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 11, ARTICLE 8, ARIZONA REVISED STATUTES, BY ADDING SECTION 14-10819; AMENDING SECTION 14-11003, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 11, ARTICLE 10, ARIZONA REVISED STATUTES, BY ADDING SECTION 14-11015; AMENDING SECTION 25-213, ARIZONA REVISED STATUTES; RELATING TO TRUSTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 14-1201, Arizona Revised Statutes, is amended to  
3 read:

4 14-1201. Definitions

5 In this title, unless the context otherwise requires:

6 1. "Agent" includes an attorney-in-fact under a durable or nondurable  
7 power of attorney, a person who is authorized to make decisions concerning  
8 another person's health care and a person who is authorized to make decisions  
9 for another person under a natural death act.

10 2. "Application" means a written request to the registrar for an order  
11 of informal probate or appointment under chapter 3, article 3 of this title.

12 3. "Beneficiary", as it relates to a trust beneficiary, includes a  
13 person who has any present or future interest, vested or contingent, and also  
14 includes the owner of an interest by assignment or other transfer. As it  
15 relates to a charitable trust, beneficiary includes any person entitled to  
16 enforce the trust. As it relates to a beneficiary of a beneficiary  
17 designation, beneficiary refers to a beneficiary of an insurance or annuity  
18 policy, an account with pay on death designation, a security registered in  
19 beneficiary form or a pension, profit sharing, retirement or similar benefit  
20 plan, or any other nonprobate transfer at death. As it relates to a  
21 beneficiary designated in a governing instrument, beneficiary includes a  
22 grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a  
23 beneficiary designation, a donee, appointee or taker in default of a power of  
24 appointment and a person in whose favor a power of attorney or a power held  
25 in any person, fiduciary or representative capacity is exercised.

26 4. "Beneficiary designation" refers to a governing instrument naming a  
27 beneficiary of an insurance or annuity policy, of an account with pay on  
28 death designation, of a security registered in beneficiary form or of a  
29 pension, profit sharing, retirement or similar benefit plan, or any other  
30 nonprobate transfer at death.

31 5. "Child" includes a person who is entitled to take as a child under  
32 this title by intestate succession from the parent whose relationship is  
33 involved. Child excludes a person who is only a stepchild, a foster child, a  
34 grandchild or a more remote descendant.

35 6. "Claims", in respect to estates of decedents and protected persons,  
36 includes liabilities of the decedent or the protected person, whether arising  
37 in contract, in tort or otherwise, and liabilities of the estate that arise  
38 at or after the death of the decedent or after the appointment of a  
39 conservator, including funeral expenses and expenses of administration.  
40 Claims do not include estate or inheritance taxes or demands or disputes  
41 regarding title of a decedent or a protected person to specific assets  
42 alleged to be included in the estate.

43 7. "Community property" means that property of a husband and wife that  
44 is acquired during the marriage and that is community property as prescribed  
45 in section 25-211.

1       8. "Conservator" means a person who is appointed by a court to manage  
2 the estate of a protected person.

3       9. "Court" means the superior court.

4       10. "Dependent child" means a minor child who the decedent was  
5 obligated to support or an adult child who was in fact being supported by the  
6 decedent at the time of the decedent's death.

7       11. "Descendant" means all of the decedent's descendants of all  
8 generations, with the relationship of parent and child at each generation.

9       12. "Devise", when used as a noun, means a testamentary disposition of  
10 real or personal property and, when used as a verb, means to dispose of real  
11 or personal property by will.

12       13. "Devisee" means a person designated in a will to receive a  
13 devise. For the purposes of chapter 3 of this title, in the case of a devise  
14 to an existing trust or trustee, or to a trustee on trust described by will,  
15 the trust or trustee is the devisee and the beneficiaries are not devisees.

16       14. "Disability" means cause for a protective order as described in  
17 section 14-5401.

18       15. "Distributee" means any person who has received property of a  
19 decedent from that person's personal representative other than as a creditor  
20 or purchaser. Distributee includes a testamentary trustee only to the extent  
21 of distributed assets or increment that remains in that person's hands. A  
22 beneficiary of a testamentary trust to whom the trustee has distributed  
23 property received from a personal representative is a distributee of the  
24 personal representative. For the purposes of this paragraph, "testamentary  
25 trustee" includes a trustee to whom assets are transferred by will, to the  
26 extent of the devised assets.

27       16. "Estate" includes the property of the decedent, trust or other  
28 person whose affairs are subject to this title as originally constituted and  
29 as it exists from time to time during administration. As it relates to a  
30 spouse, the estate includes only the separate property and the share of the  
31 community property belonging to the decedent or person whose affairs are  
32 subject to this title.

33       17. "Exempt property" means that property of a decedent's estate that  
34 is described in section 14-2403.

35       18. "Fiduciary" includes a personal representative, guardian,  
36 conservator and trustee.

37       19. "Foreign personal representative" means a personal representative  
38 appointed by another jurisdiction.

39       20. "Formal proceedings" means proceedings conducted before a judge  
40 with notice to interested persons.

41       21. "Governing instrument" means a deed, will, trust, insurance or  
42 annuity policy, account with pay on death designation, security registered in  
43 beneficiary form, pension, profit sharing, retirement or similar benefit  
44 plan, instrument creating or exercising a power of appointment or a power of

1 attorney or a dispositive, appointive or nominative instrument of any similar  
2 type.

3 22. "Guardian" means a person who has qualified as a guardian of a  
4 minor or incapacitated person pursuant to testamentary or court appointment  
5 but excludes a person who is merely a guardian ad litem.

6 23. "Heirs", except as controlled by section 14-2711, means persons,  
7 including the surviving spouse and the state, who are entitled under the  
8 statutes of intestate succession to the property of a decedent.

9 24. "Incapacitated person" has the same meaning prescribed in section  
10 14-5101.

11 25. "Informal proceedings" means those proceedings conducted without  
12 notice to interested persons by an officer of the court acting as a registrar  
13 for probate of a will or appointment of a personal representative.

14 26. "Interested person" includes any trustee, heir, devisee, child,  
15 spouse, creditor, beneficiary, PERSON HOLDING A POWER OF APPOINTMENT and  
16 other person who has a property right in or claim against a trust estate or  
17 the estate of a decedent, ward or protected person. Interested person also  
18 includes a person who has priority for appointment as personal representative  
19 and other fiduciaries representing interested persons. Interested person, as  
20 the term relates to particular persons, may vary from time to time and must  
21 be determined according to the particular purposes of, and matter involved  
22 in, any proceeding.

23 27. "Issue" of a person means descendant as defined in this section.

24 28. "Joint tenants with the right of survivorship" and "community  
25 property with the right of survivorship" includes co-owners of property held  
26 under circumstances that entitle one or more to the whole of the property on  
27 the death of the other or others but excludes forms of co-ownership  
28 registration in which the underlying ownership of each party is in proportion  
29 to that party's contribution.

30 29. "Lease" includes any oil, gas or other mineral lease.

31 30. "Letters" includes letters testamentary, letters of guardianship,  
32 letters of administration and letters of conservatorship.

33 31. "Minor" means a person who is under eighteen years of age.

34 32. "Mortgage" means any conveyance, agreement or arrangement in which  
35 property is encumbered or used as security. Mortgage does not include leases  
36 or easements.

37 33. "Nonresident decedent" means a decedent who was domiciled in  
38 another jurisdiction at the time of the decedent's death.

39 34. "Organization" means a corporation, limited liability company,  
40 business trust, estate, trust, partnership, joint venture, association,  
41 government or governmental subdivision or agency or any other legal or  
42 commercial entity.

43 35. "Parent" includes any person entitled to take, or who would be  
44 entitled to take if the child died without a will, as a parent under this  
45 title by intestate succession from the child whose relationship is in

1 question and excludes any person who is only a stepparent, foster parent or  
2 grandparent.

3 36. "Payor" means a trustee, insurer, business entity, employer,  
4 government, governmental agency or subdivision or any other person who is  
5 authorized or obligated by law or a governing instrument to make payments.

6 37. "Person" means ~~a person~~ AN INDIVIDUAL or an organization.

7 38. "Personal representative" includes executor, administrator,  
8 successor personal representative, special administrator and persons who  
9 perform substantially the same function under the law governing their status.  
10 A general personal representative excludes a special administrator.

11 39. "Petition" means a written request to the court for an order after  
12 notice.

13 40. "Proceeding" includes action at law and suit in equity.

14 41. "Property" has the same meaning prescribed in section 14-10103.

15 42. "Protected person" has the same meaning prescribed in section  
16 14-5101.

17 43. "Protective proceeding" has the same meaning prescribed in section  
18 14-5101.

19 44. "Registrar" means the official of the court designated to perform  
20 the functions of registrar as provided in section 14-1307.

21 45. "Security" includes any note, stock, treasury stock, bond,  
22 debenture, evidence of indebtedness, certificate of interest or participation  
23 in an oil, gas or mining title or lease or in payments out of production  
24 under that title or lease, collateral trust certificate, transferable share  
25 or voting trust certificate and, in general, includes any interest or  
26 instrument commonly known as a security, or any certificate of interest or  
27 participation, any temporary or interim certificate, receipt or certificate  
28 of deposit for, or any warrant or right to subscribe to or purchase, any of  
29 these securities.

30 46. "Separate property" means that property of a husband or wife that  
31 is the spouse's separate property as defined in section 25-213.

32 47. "Settlement", in reference to a decedent's estate, includes the  
33 full process of administration, distribution and closing.

34 48. "Special administrator" means a personal representative as  
35 described by sections 14-3614 through 14-3618.

36 49. "State" has the same meaning prescribed in section 14-10103.

37 50. "Successor personal representative" means a personal  
38 representative, other than a special administrator, who is appointed to  
39 succeed a previously appointed personal representative.

40 51. "Successors" means persons, other than creditors, who are entitled  
41 to property of a decedent under a will or this title.

42 52. "Supervised administration" refers to the proceedings described in  
43 chapter 3, article 5 of this title.

1       53. "Survive" means that a person has neither predeceased an event,  
2 including the death of another person, nor is deemed to have predeceased an  
3 event under section 14-2104 or 14-2702.

4       54. "Testacy proceeding" means a proceeding to establish a will or  
5 determine intestacy.

6       55. "Testator" includes a person of either sex.

7       56. "Trust" includes an express trust, private or charitable, with any  
8 additions, wherever and however created. Trust also includes a trust created  
9 or determined by judgment or decree under which the trust is to be  
10 administered in the manner of an express trust. Trust excludes other  
11 constructive trusts and excludes resulting trusts, conservatorship, personal  
12 representatives, trust accounts, custodial arrangements pursuant to chapter  
13 7, article 7 of this title, business trusts providing for certificates to be  
14 issued to beneficiaries, common trust funds, voting trusts, security  
15 arrangements, liquidation trusts and trusts for the primary purpose of paying  
16 debts, dividends, interest, salaries, wages, profits, pensions or employee  
17 benefits of any kind, trusts created by a city or town for the payment of  
18 medical insurance, health care benefits or expenses, long-term or short-term  
19 disability, self insurance reserves and similar programs administered by a  
20 city or town, LEGAL DEFENSE TRUSTS and any arrangement under which a person  
21 is nominee or escrowee for another.

22       57. "Trustee" includes an original, additional or successor trustee,  
23 whether or not appointed or confirmed by court.

24       58. "Ward" has the same meaning prescribed in section 14-5101.

25       59. "Will" includes a codicil and any testamentary instrument that  
26 merely appoints an executor, revokes or revises another will, nominates a  
27 guardian or expressly excludes or limits the right of an individual or class  
28 to succeed to property of the decedent passing by intestate succession.

29       Sec. 2. Section 14-2903, Arizona Revised Statutes, is amended to read:  
30       14-2903. Reformation of a disposition plan; conditions

31       On the petition of an interested person, a court shall reform a  
32 disposition in the manner that most closely approximates the transferor's  
33 manifested plan of distribution and that is within the ~~ninety~~ FIVE HUNDRED  
34 years allowed under section 14-2901 if:

35       1. A nonvested property interest or a power of appointment becomes  
36 invalid under section 14-2901.

37       2. A class gift is not but might become invalid under section 14-2901  
38 and the time has arrived when the share of any class member is to take effect  
39 in possession or enjoyment.

40       3. A nonvested property interest that is not validated by section  
41 14-2901, subsection A, paragraph 1 can vest but not within ninety years after  
42 its creation.

1           Sec. 3. Section 14-2907, Arizona Revised Statutes, is amended to read:  
2           14-2907. Honorary trusts; trusts for pets; conditions

3           A. If a trust is for a specific lawful noncharitable purpose or for  
4           lawful noncharitable purposes to be selected by the trustee and there is no  
5           definite or definitely ascertainable beneficiary designated, the trust may be  
6           performed by the trustee for not longer than ~~twenty-one~~ NINETY years whether  
7           or not the terms of the trust contemplate a longer duration.

8           B. A trust for the care of a designated domestic or pet animal is  
9           valid. The trust terminates when no living animal is covered by the trust.  
10          A governing instrument shall be liberally construed to bring the transfer  
11          within this subsection, to presume against the merely precatory or honorary  
12          nature of the disposition and to carry out the general intent of the  
13          transferor. Extrinsic evidence is admissible in determining the transferor's  
14          intent.

15          C. In addition to the provisions of subsection A or B, a trust created  
16          under this section is subject to the following:

17           1. Except as expressly provided otherwise in the trust instrument, no  
18           portion of the principal or income may be converted to the use of the trustee  
19           or to any use other than for the trust's purposes or for the benefit of a  
20           covered animal.

21           2. On termination, the trustee shall transfer the unexpended trust  
22           property in the following order:

23           (a) As directed in the trust instrument.

24           (b) If the trust was created in a nonresiduary clause in the  
25           transferor's will or in a codicil to the transferor's will, under the  
26           residuary clause in the transferor's will.

27           (c) If no taker is produced by the application of subdivision (a) or  
28           (b) of this paragraph, to the transferor's heirs under section 14-2711.

29           3. For the purposes of section 14-2707, the residuary clause is  
30           treated as creating a future interest under the terms of a trust.

31           4. The intended use of the principal or income can be enforced by a  
32           person who is designated for that purpose in the trust instrument or, if  
33           none, by a person appointed by a court on application to it by any person.

34           5. Except as ordered by the court or required by the trust instrument,  
35           no filing, report, registration, periodic accounting, separate maintenance of  
36           funds, appointment or fee is required by reason of the existence of the  
37           fiduciary relationship of the trustee.

38           6. A court may reduce the amount of the property transferred if it  
39           determines that amount substantially exceeds the amount required for the  
40           intended use. The amount of the reduction, if any, passes as unexpended  
41           trust property under paragraph 2 of this subsection.

42           7. If no trustee is designated or no designated trustee is willing or  
43           able to serve, a court shall name a trustee. A court may order the transfer  
44           of the property to another trustee if this is necessary to assure that the  
45           intended use is carried out and if no successor trustee is designated in the

1 trust instrument or if no designated successor trustee agrees to serve or is  
2 able to serve. A court may also make other orders and determinations that it  
3 determines advisable to carry out the intent of the transferor and this  
4 section.

5 Sec. 4. Section 14-3715, Arizona Revised Statutes, is amended to read:

6 14-3715. Transactions authorized for personal representatives;  
7 exceptions

8 Except as restricted or otherwise provided by the will or by an order  
9 in a formal proceeding and subject to the priorities stated in section  
10 14-3902, a personal representative, acting reasonably for the benefit of the  
11 interested persons, may properly:

12 1. Retain assets owned by the decedent pending distribution or  
13 liquidation including those in which the representative is personally  
14 interested or which are otherwise improper for trust investment.

15 2. Receive assets from fiduciaries or other sources.

16 3. Perform, compromise or refuse performance of the decedent's  
17 contracts that continue as obligations of the estate, as he may determine  
18 under the circumstances. In performing enforceable contracts by the decedent  
19 to convey or lease land, the personal representative, among other possible  
20 courses of action, may either:

21 (a) Execute and deliver a deed of conveyance for cash payment of all  
22 sums remaining due or the purchaser's note for the sum remaining due secured  
23 by a mortgage or deed of trust on the land.

24 (b) Deliver a deed in escrow with directions that the proceeds, when  
25 paid in accordance with the escrow agreement, be paid to the successors of  
26 the decedent, as designated in the escrow agreement.

27 4. Satisfy written charitable pledges of the decedent irrespective of  
28 whether the pledges constituted binding obligations of the decedent or were  
29 properly presented as claims, if in the judgment of the personal  
30 representative the decedent would have wanted the pledges completed under the  
31 circumstances.

32 5. If funds are not needed to meet debts and expenses currently  
33 payable and are not immediately distributable, deposit or invest liquid  
34 assets of the estate, including monies received from the sale of other  
35 assets, in federally insured interest-bearing accounts, readily marketable  
36 secured loan arrangements or other prudent investments which would be  
37 reasonable for use by trustees generally.

38 6. Acquire or dispose of an asset, including land in this or another  
39 state, for cash or on credit and at public or private sale and manage,  
40 develop, improve, exchange, partition, change the character of or abandon an  
41 estate asset.

42 7. Make ordinary or extraordinary repairs or alterations in buildings  
43 or other structures, demolish any improvements, raze existing or erect new  
44 party walls or buildings.



1           8. Subdivide, develop or dedicate land to public use, make or obtain  
2 the vacation of plats and adjust boundaries, adjust differences in valuation  
3 on exchange or partition by giving or receiving considerations or dedicate  
4 easements to public use without consideration.

5           9. Enter for any purpose into a lease as lessor or lessee, with or  
6 without option to purchase or renew, for a term within or extending beyond  
7 the period of administration.

8           10. Enter into a lease or arrangement for exploration and removal of  
9 minerals or other natural resources or enter into a pooling or unitization  
10 agreement.

11          11. Abandon property when, in the opinion of the personal  
12 representative, it is valueless, is so encumbered, or is in condition that it  
13 is of no benefit to the estate.

14          12. Vote stocks or other securities in person or by general or limited  
15 proxy.

16          13. Pay calls, assessments,— and other sums chargeable or accruing  
17 against or on account of securities, unless barred by the provisions relating  
18 to claims.

19          14. Hold a security in the name of a nominee or in other form without  
20 disclosure of the interest of the estate but the personal representative is  
21 liable for any act of the nominee in connection with the security so held.

22          15. Insure the assets of the estate against damage, loss and liability  
23 and himself against liability as to third persons.

24          16. Borrow money with or without security to be repaid from the estate  
25 assets or otherwise, and advance money for the protection of the estate.

26          17. Effect a fair and reasonable compromise with any debtor or obligor,  
27 or extend, renew or in any manner modify the terms of any obligation owing to  
28 the estate. If the personal representative holds a mortgage, pledge or other  
29 lien upon property of another person, he may, in lieu of foreclosure, accept  
30 a conveyance or transfer of encumbered assets from the owner thereof in  
31 satisfaction of the indebtedness secured by lien.

32          18. Pay taxes, assessments, compensation of the personal representative  
33 and other expenses incident to the administration of the estate.

34          19. Sell or exercise stock subscription or conversion rights, and  
35 consent, directly or through a committee or other agent, to the  
36 reorganization, consolidation, merger, dissolution or liquidation of a  
37 corporation or other business enterprise.

38          20. Allocate items of income or expense to either estate income or  
39 principal, as permitted or provided by law.

40          21. Employ persons, including attorneys, auditors, investment advisors  
41 or agents, even if they are associated with the personal representative, to  
42 advise or assist the personal representative in the performance of his  
43 administrative duties, act without independent investigation upon their  
44 recommendations and instead of acting personally, employ one or more agents  
45 to perform any act of administration, whether or not discretionary.

1       22. Prosecute or defend claims, or proceedings in any jurisdiction for  
2 the protection of the estate and of the personal representative in the  
3 performance of his duties.

4       23. Sell, mortgage or lease any real or personal property of the estate  
5 or any interest therein for cash, OR credit or for part cash and part  
6 credit, and with or without security for unpaid balances.

7       24. Continue any unincorporated business or venture in which the  
8 decedent was engaged at the time of his death:

9       (a) In the same business form for a period of not more than four  
10 months from the date of appointment of a general personal representative if  
11 continuation is a reasonable means of preserving the value of the business  
12 including goodwill.

13       (b) In the same business form for any additional period of time that  
14 may be approved by order of the court in a formal proceeding with notice to  
15 interested persons.

16       (c) Throughout the period of administration if the business is  
17 incorporated by the personal representative and if none of the probable  
18 distributees of the business who are competent adults object to its  
19 incorporation and retention in the estate.

20       25. Incorporate, OR CREATE A LIMITED LIABILITY COMPANY TO HOLD, any  
21 business or venture in which the decedent was engaged at the time of his  
22 death.

23       26. Provide for exoneration of the personal representative from  
24 personal liability in any contract entered into on behalf of the estate.

25       27. Satisfy and settle claims and distribute the estate as provided in  
26 this title.

27       Sec. 5. Title 14, chapter 3, article 9, Arizona Revised Statutes, is  
28 amended by adding section 14-3916, to read:

29       14-3916. Community property

30       IN MAKING A DIVISION OR DISTRIBUTION OF COMMUNITY PROPERTY HELD IN THE  
31 DECEDENT'S ESTATE, THE PERSONAL REPRESENTATIVE MAY CONSIDER COMMUNITY  
32 PROPERTY HELD OUTSIDE THE ESTATE SO THAT THE DIVISION OF COMMUNITY PROPERTY  
33 HELD IN THE ESTATE AND OUTSIDE THE ESTATE IS BASED ON EQUAL VALUE BUT IS NOT  
34 NECESSARILY PROPORTIONATE.

35       Sec. 6. Section 14-7403, Arizona Revised Statutes, is amended to read:

36       14-7403. Trustee's power to adjust

37       A. A trustee may adjust between principal and income to the extent the  
38 trustee considers necessary if the trustee invests and manages trust assets  
39 as a prudent investor, the terms of the trust describe the amount that may or  
40 must be distributed to a beneficiary by referring to the trust's income and  
41 the trustee determines, after applying the provisions of section 14-7402,  
42 subsection A, that the trustee is unable to comply with section 14-7402,  
43 subsection B.

44       B. In deciding whether and to what extent to exercise the power  
45 conferred by subsection A of this section, a trustee shall consider all

1 factors relevant to the trust and its beneficiaries, including the following  
2 factors to the extent they are relevant:

- 3 1. The nature, purpose and expected duration of the trust.
- 4 2. The intent of the settlor.
- 5 3. The identity and circumstances of the beneficiaries.
- 6 4. The need for liquidity, regularity of income and preservation and  
7 appreciation of capital.

8 5. The assets held in the trust and:

9 (a) The extent to which:

10 (i) They consist of financial assets, interests in closely held  
11 enterprises, tangible and intangible personal property or real property.

12 (ii) An asset is used by a beneficiary.

13 (b) Whether an asset was purchased by the trustee or received from the  
14 settlor.

15 6. The net amount allocated to income under this article and the  
16 increase or decrease in the value of the principal assets, which the trustee  
17 may estimate as to assets for which market values are not readily available.

18 7. Whether and to what extent the terms of the trust give the trustee  
19 the power to invade principal or accumulate income or prohibit the trustee  
20 from invading principal or accumulating income, and the extent to which the  
21 trustee has exercised a power from time to time to invade principal or  
22 accumulate income.

23 8. The actual and anticipated effect of economic conditions on  
24 principal and income and effects of inflation and deflation.

25 9. The anticipated tax consequences of an adjustment.

26 10. WHETHER THE TRUST HAS BEEN CONVERTED TO A UNITRUST PURSUANT TO  
27 SECTION 14-11014.

28 C. A trustee may not make an adjustment:

29 1. That diminishes the income interest in a trust that requires all of  
30 the income to be paid at least annually to a spouse and for which an estate  
31 tax or gift tax marital deduction would be allowed, in whole or in part, if  
32 the trustee did not have the power to make the adjustment.

33 2. That reduces the actuarial value of the income interest in a trust  
34 to which a person transfers property with the intent to qualify for a gift  
35 tax exclusion.

36 3. That changes the amount payable to a beneficiary as a fixed annuity  
37 or a fixed fraction of the value of the trust assets.

38 4. From any amount that is permanently set aside for charitable  
39 purposes under a will or the terms of a trust unless both income and  
40 principal are so set aside.

41 5. If possessing or exercising the power to make an adjustment causes  
42 an individual to be treated as the owner of all or part of the trust for  
43 income tax purposes and the individual would not be treated as the owner if  
44 the trustee did not possess the power to make an adjustment.

1           6. If possessing or exercising the power to make an adjustment causes  
2 all or part of the trust assets to be included for estate tax purposes in the  
3 estate of an individual who has the power to remove a trustee or appoint a  
4 trustee, or both, and the assets would not be included in the estate of the  
5 individual if the trustee did not possess the power to make an adjustment.

6           7. If the trustee is a beneficiary of the trust.

7           8. If the trustee is not a beneficiary, but the adjustment would  
8 benefit the trustee directly or indirectly.

9           D. If subsection C, paragraph 5, 6, 7 or 8 of this section applies to  
10 a trustee and there is more than one trustee, a cotrustee to whom the  
11 provision does not apply may make the adjustment unless the exercise of the  
12 power by the remaining trustee or trustees is not permitted by the terms of  
13 the trust.

14           E. A trustee may release the entire power conferred by subsection A of  
15 this section or may release only the power to adjust from income to principal  
16 or the power to adjust from principal to income if the trustee is uncertain  
17 about whether possessing or exercising the power will cause a result  
18 described in subsection C, paragraph 1, 2, 3, 4, 5, 6 or 8 of this section,  
19 or if the trustee determines that possessing or exercising the power will or  
20 may deprive the trust of a tax benefit or impose a tax burden not described  
21 in subsection C of this section. The release may be permanent or for a  
22 specified period, including a period measured by the life of an individual.

23           F. Terms of a trust that limit the power of a trustee to make an  
24 adjustment between principal and income do not affect the application of this  
25 section unless it is clear from the terms of the trust that the terms are  
26 intended to deny the trustee the power of adjustment conferred by subsection  
27 A of this section.

28           Sec. 7. Section 14-10103, Arizona Revised Statutes, is amended to  
29 read:

30           14-10103. Definitions

31           In this chapter, unless the context otherwise requires:

32           1. "Action", with respect to an act of a trustee, includes a failure  
33 to act.

34           2. "Beneficiary" means a person who either:

35           (a) Has a present or future beneficial interest in a trust, vested or  
36 contingent.

37           (b) In a capacity other than that of a trustee, holds a power of  
38 appointment over trust property.

39           3. "Charitable trust" means a trust, or portion of a trust, created  
40 for a charitable purpose described in section 14-10405, subsection A.

41           4. "Conservator" means a person appointed by the court to administer  
42 the estate of a minor or an adult.

43           5. "DISTRIBUTE" MEANS A PERSON WHO RECEIVES PROPERTY FROM A TRUST  
44 OTHER THAN AS A CREDITOR OR PURCHASER.

1       ~~5-~~ 6. "Environmental law" means a federal, state or local law, rule,  
2 regulation or ordinance relating to protection of the environment.

3       ~~6-~~ 7. "Guardian" means a person appointed by the court to make  
4 decisions regarding the support, care, education, health and welfare of a  
5 minor or an adult. Guardian does not include a guardian ad litem.

6       ~~7-~~ 8. "Interests of the beneficiaries" means the beneficial interests  
7 provided in the terms of the trust.

8       ~~8-~~ 9. "Internal revenue code" has the same meaning prescribed in  
9 section 43-105.

10       ~~9-~~ 10. "Jurisdiction", with respect to a geographic area, includes a  
11 state or country.

12       ~~10-~~ 11. "Person" means an individual, corporation, business trust,  
13 estate, trust, partnership, limited liability company, association, joint  
14 venture, government, governmental subdivision, agency or instrumentality,  
15 public corporation or any other legal or commercial entity.

16       ~~11-~~ 12. "Power of withdrawal" means a presently exercisable general  
17 power of appointment other than a power exercisable either:

18       (a) By a trustee and limited by an ascertainable standard.

19       (b) By a person other than in a fiduciary capacity and only on the  
20 consent of the trustee or a person holding an adverse interest.

21       ~~12-~~ 13. "Property" means anything that may be the subject of  
22 ownership, whether real or personal, legal or equitable, or any interest in  
23 anything that may be the subject of ownership.

24       ~~13-~~ 14. "Qualified beneficiary" means a beneficiary who, on the date  
25 the beneficiary's qualification is determined:

26       (a) Is a distributee or permissible distributee of trust income or  
27 principal.

28       (b) Would be a distributee or permissible distributee of trust income  
29 or principal if the interests of the distributees described in subdivision  
30 (a) of this paragraph terminated on that date.

31       (c) Would be a distributee or permissible distributee of trust income  
32 or principal if the trust terminated on that date.

33       ~~14-~~ 15. "Revocable", as applied to a trust or a portion of a trust,  
34 means revocable by a settlor without the consent of any person, including the  
35 trustee or a person who holds an interest that is either adverse or not  
36 adverse.

37       ~~15-~~ 16. "Settlor" means a person, including a testator, who creates or  
38 contributes property to a trust. If more than one person creates or  
39 contributes property to a trust, each person is a settlor of the portion of  
40 the trust property attributable to that person's contribution except to the  
41 extent another person has the power to revoke or withdraw that portion.

42       ~~16-~~ 17. "Special needs trust" means a trust established for the  
43 benefit of one or more disabled persons if one of the purposes of the trust,  
44 expressed in the trust instrument or implied from the trust instrument, is to  
45 allow the disabled person to qualify or continue to qualify for public,

1 charitable or private benefits that might otherwise be available to the  
2 disabled person. The existence of one or more nondisabled remainder  
3 beneficiaries of the trust shall not disqualify it as a special needs trust  
4 for THE purposes of this paragraph. FOR THE PURPOSES OF THIS PARAGRAPH,  
5 "DISABLED PERSON" MEANS AN INDIVIDUAL WHO IS DISABLED PURSUANT TO 42 UNITED  
6 STATES CODE SECTION 1382c.

7 ~~17.~~ 18. "Spendthrift provision" means a term of a trust that restrains  
8 ~~both~~ EITHER voluntary ~~and~~ OR involuntary transfer of a beneficiary's  
9 interest.

10 ~~18.~~ 19. "State" means a state of the United States, the District of  
11 Columbia, Puerto Rico, the United States Virgin Islands or any territory or  
12 insular possession subject to the jurisdiction of the United States. State  
13 includes an Indian tribe or band recognized by federal law or formally  
14 acknowledged by a state.

15 ~~19.~~ 20. "Terms of a trust" means the manifestation of the settlor's  
16 intent regarding a trust's provisions as expressed in the trust instrument or  
17 as may be established by other evidence that would be admissible in a  
18 judicial proceeding.

19 ~~20.~~ 21. "Trust instrument" means an instrument executed by the settlor  
20 that contains terms of the trust, including any amendments to that trust.

21 ~~21.~~ 22. "Trustee" includes an original, additional and successor  
22 trustee and a cotrustee.

23 Sec. 8. Section 14-10105, Arizona Revised Statutes, is amended to  
24 read:

25 14-10105. Default and mandatory rules

26 A. Except as otherwise provided in the terms of the trust, this  
27 chapter governs:

28 1. The duties, powers, exercise of powers resignation, and appointment  
29 of a trustee.

30 2. Conflicts of interest of a trustee.

31 3. Relations among trustees.

32 4. Mergers or divisions of trusts.

33 5. The rights and interests of a beneficiary.

34 B. The terms of a trust prevail over any provision of this chapter  
35 except:

36 1. The requirements for creating a trust.

37 2. The duty of a trustee to act in good faith and in accordance with  
38 the purposes of the trust.

39 3. The requirement that a trust and its terms be for the benefit of  
40 its beneficiaries and that the trust have a purpose that is lawful, not  
41 contrary to public policy and possible to achieve.

42 4. The power of the court to modify or terminate a trust under  
43 sections 14-10410, 14-10411, 14-10412, 14-10413, 14-10414, 14-10415 and  
44 14-10416.

1           5. The effect of a spendthrift provision and the rights of certain  
2 creditors and assignees to reach a trust as provided in article 5 of this  
3 chapter.

4           6. The power of the court under section 14-10702 to require, dispense  
5 with, modify or terminate a bond.

6           7. The power of the court under section 14-10708, subsection B to  
7 adjust a trustee's compensation specified in the terms of the trust that is  
8 unreasonably low or high.

9           8. The duty to respond to the request of a qualified beneficiary of an  
10 irrevocable trust for trustee's reports and other information reasonably  
11 related to the administration of a trust.

12           9. The effect of an exculpatory term under section 14-11008.

13           10. The rights under sections 14-11010, 14-11011, 14-11012 and 14-11013  
14 of a person other than a trustee or beneficiary.

15           11. Periods of limitation for commencing a judicial proceeding.

16           12. The power of the court to take action CONSISTENT WITH THE SETTLOR'S  
17 INTENT and exercise jurisdiction as may be necessary in the interests of  
18 justice.

19           13. The subject matter jurisdiction of the court and venue for  
20 commencing a proceeding as provided in sections 14-10203 and 14-10204.

21           14. The notice provisions of section 14-10110, subsection B.

22           Sec. 9. Section 14-10108, Arizona Revised Statutes, is amended to  
23 read:

24           14-10108. Principal place of administration

25           A. Without precluding other means for establishing a sufficient  
26 connection with the designated jurisdiction, terms of a trust designating the  
27 principal place of administration are valid and controlling if either:

28           1. A trustee's principal place of business is located in or a trustee  
29 is a resident of the designated jurisdiction.

30           2. All or part of the administration occurs in the designated  
31 jurisdiction.

32           B. A trustee is under a continuing duty to administer the trust at a  
33 place appropriate to its purposes, its administration and the interests of  
34 the beneficiaries.

35           C. Without precluding the right of the court to order, approve or  
36 disapprove a transfer, the trustee, in furtherance of the duty prescribed by  
37 subsection B of this section, may transfer the trust's principal place of  
38 administration to another state or to a jurisdiction outside of the United  
39 States AND, SUBJECT TO THE REQUIREMENTS OF SECTION 14-10818, MAY CHANGE THE  
40 APPLICABLE LAW GOVERNING THE TRUST.

41           D. The trustee shall notify the qualified beneficiaries of a proposed  
42 transfer of a trust's principal place of administration at least sixty days  
43 before initiating the transfer. Unless a corporate trustee indicates an  
44 intent to change the principal place of business in a notice to qualified  
45 beneficiaries, a transfer by the corporate trustee of some of the functions

1 of a trust to another state or states is not a transfer of the trust's  
2 principal place of business if the corporate trustee maintains an office in  
3 this state. The notice of proposed transfer must include:

4 1. The name of the jurisdiction to which the principal place of  
5 administration is to be transferred.

6 2. The address and telephone number of the new location at which the  
7 trustee can be contacted.

8 3. An explanation of the reasons for the proposed transfer.

9 4. The date on which the proposed transfer is anticipated to occur.

10 5. The date, at least sixty days after the giving of the notice, by  
11 which the qualified beneficiary must notify the trustee of an objection to  
12 the proposed transfer.

13 E. The authority of a trustee under this section to transfer a trust's  
14 principal place of administration terminates if a qualified beneficiary  
15 notifies the trustee in writing of an A REASONABLY FOUNDED objection to the  
16 proposed transfer on or before the date specified in the notice.

17 F. In connection with a transfer of the trust's principal place of  
18 administration, the trustee may transfer some or all of the trust property to  
19 a successor trustee designated in the terms of the trust or appointed  
20 pursuant to section 14-10704.

21 Sec. 10. Section 14-10111, Arizona Revised Statutes, is amended to  
22 read:

23 14-10111. Nonjudicial settlement agreements; definition

24 A. Except as otherwise provided in subsection B of this section, and  
25 except for modification or termination of a trust as otherwise permitted  
26 pursuant to the trust instrument, interested persons may enter into a binding  
27 nonjudicial settlement agreement with respect to any matter involving a  
28 trust.

29 B. A nonjudicial settlement agreement is valid only to the extent it  
30 does not violate a material purpose of the trust and includes terms and  
31 conditions that could be properly approved by the court under this chapter or  
32 other applicable law.

33 C. Matters that may be resolved by a nonjudicial settlement agreement  
34 include:

35 1. The interpretation or construction of the terms of the trust.

36 2. The approval of a trustee's report or accounting.

37 3. Direction to a trustee to refrain from performing a particular act  
38 or the grant to a trustee of any necessary or desirable power.

39 4. The resignation or appointment of a trustee and the determination  
40 of a trustee's compensation.

41 5. The transfer of a trust's principal place of administration.

42 6. The liability of a trustee for an action relating to the trust.

43 D. Any interested person may request the court to approve a  
44 nonjudicial settlement agreement to determine whether the representation as  
45 provided in article 3 of this chapter was adequate and to determine whether



1 the agreement contains terms and conditions the court could have properly  
2 approved.

3 ~~E. This section applies only to any trust that becomes irrevocable on~~  
4 ~~or after January 1, 2009.~~

5 F. E. For the purposes of this section, "interested person" has the  
6 same meaning prescribed in section 14-1201.

7 Sec. 11. Section 14-10407, Arizona Revised Statutes, is amended to  
8 read:

9 14-10407. Evidence of oral trust

10 Except as required by a statute other than this chapter, a trust need  
11 not be evidenced by a trust instrument, but the creation of an oral trust  
12 shall be established only by clear and convincing evidence and ~~it's~~ THE terms  
13 OF THE ORAL TRUST shall be established by a preponderance of the evidence.  
14 IF A TRUST IS CREATED BY WRITTEN INSTRUMENT, IT MAY BE AMENDED OR REVOKED  
15 ONLY BY WRITTEN INSTRUMENT EXECUTED BY THE SETTLOR.

16 Sec. 12. Section 14-10410, Arizona Revised Statutes, is amended to  
17 read:

18 14-10410. Modification or termination of trust; proceedings for  
19 approval or disapproval

20 A. In addition to the methods of termination prescribed by sections  
21 14-10411, 14-10412, 14-10413 and 14-10414, a trust terminates to the extent  
22 the trust is revoked or expires pursuant to its terms, no purpose of the  
23 trust remains to be achieved or the purposes of the trust have become  
24 unlawful, contrary to public policy or impossible to achieve.

25 B. A proceeding to approve or disapprove a proposed modification or  
26 termination under sections 14-10411, 14-10412, 14-10413, 14-10414, 14-10415  
27 and 14-10416, or trust combination or division under section 14-10417, may be  
28 commenced by a trustee or beneficiary, ~~and a proceeding to approve or~~  
29 ~~disapprove a proposed modification or termination under section 14-10411 may~~  
30 ~~be commenced by the settlor.~~ The settlor of a charitable trust may maintain  
31 a proceeding to modify the trust under section 14-10413.

32 Sec. 13. Title 14, chapter 11, article 4, Arizona Revised Statutes, is  
33 amended by adding section 14-10418, to read:

34 14-10418. Name change

35 THE TRUSTEE MAY MODIFY A TRUST AGREEMENT TO CHANGE THE NAME OF THE  
36 TRUSTEE OR BENEFICIARY IF THE TRUSTEE OR BENEFICIARY'S NAME HAS BEEN LEGALLY  
37 CHANGED.

38 Sec. 14. Section 14-10504, Arizona Revised Statutes, is amended to  
39 read:

40 14-10504. Discretionary trusts; effect of standard; definition

41 A. Except as provided in subsection B of this section, whether or not  
42 a trust contains a spendthrift provision, a creditor of a beneficiary may not  
43 compel a distribution that is subject to the trustee's discretion, even if  
44 either:

1           1. The discretion is expressed in the form of a standard of  
2 distribution.

3           2. The trustee has not complied with the applicable standard of  
4 distribution or has abused the discretion regarding distributions.

5           B. To the extent a trustee has not complied with the applicable  
6 standard of distribution or has abused the discretion regarding  
7 distributions:

8           1. Except as provided in section 14-10503, a distribution may be  
9 ordered by the court to satisfy a judgment or court order against the  
10 beneficiary for support or maintenance of the beneficiary's child.

11           2. The court shall direct the trustee to pay to the child an amount as  
12 is equitable under the circumstances but not more than the amount the trustee  
13 would have been required to distribute to or for the benefit of the  
14 beneficiary had the trustee complied with the standard or not abused the  
15 discretion.

16           C. This section does not limit the right of a beneficiary to maintain  
17 a judicial proceeding against a trustee for an abuse of discretion or failure  
18 to comply with a standard for distribution, provided that this right may not  
19 be exercised by a creditor of the beneficiary.

20           D. Whether or not a trust contains a spendthrift provision:

21           1. A creditor of a trust beneficiary may not compel a distribution  
22 from insurance proceeds payable to the trustee as beneficiary to the extent  
23 state law exempts such insurance proceeds from creditors' claims if it had  
24 been paid directly to the trust beneficiary.

25           2. To the extent that under Arizona law life insurance proceeds,  
26 policy cash surrender values or other distributions or payments are exempt  
27 from attachment or garnishment by, execution on or otherwise the reach of  
28 creditors, if the death benefit is payable to an individual beneficiary, the  
29 life insurance proceeds, policy cash surrender values or other distributions  
30 or payments are also exempt from attachment or garnishment by, execution on  
31 or otherwise the reach of creditors if payable to a trust ~~for~~ OF WHICH A  
32 BENEFICIARY IS that individual.

33           E. A creditor of a beneficiary, whether or not the beneficiary is also  
34 a trustee or cotrustee, may not reach the beneficiary's beneficial interest  
35 or otherwise compel a distribution if either the trustee's discretion to make  
36 distributions for the trustee's own benefit is purely discretionary or is  
37 limited by an ascertainable standard, including a standard relating to the  
38 beneficiary's health, education, support or maintenance or similar language  
39 within the meaning of section 2041(b)(1)(a) of the internal revenue code.

40           F. For the purposes of this section, "child" includes any person for  
41 whom an order or judgment for child support has been entered in this or  
42 another state.

1           Sec. 15. Section 14-10505, Arizona Revised Statutes, is amended to  
2 read:

3           14-10505. Creditor's claim against settlor

4           A. Whether or not the terms of a trust contain a spendthrift  
5 provision, the following rules apply:

6           1. During the lifetime of the settlor, the property of a revocable  
7 trust is subject to claims of the settlor's creditors. If a trust has more  
8 than one settlor or contributor, the amount the creditor or assignee of a  
9 particular settlor may reach may not exceed the settlor's interest in the  
10 portion of the trust attributable to that settlor's contribution. This  
11 paragraph does not abrogate otherwise applicable laws relating to community  
12 property.

13           2. Subject to the requirements of this section, with respect to an  
14 irrevocable trust, a creditor or assignee of the settlor may reach the  
15 maximum amount that can be distributed to or for the settlor's benefit. If a  
16 trust has more than one settlor, the amount the creditor or assignee of a  
17 particular settlor may reach may not exceed the settlor's interest in the  
18 portion of the trust attributable to that settlor's contribution. This  
19 paragraph does not apply to any trust from which any distribution to the  
20 settlor can be made pursuant to the exercise of a power of appointment held  
21 by a third party or abrogate otherwise applicable laws relating to community  
22 property. A creditor of a settlor:

23           (a) Shall not reach any trust property based on a trustee's, trust  
24 protector's or third party's power, whether or not discretionary, to pay or  
25 reimburse the settlor for any income tax on trust income or trust principal  
26 that is payable by the settlor under the law imposing the tax or to pay the  
27 tax directly to any taxing authority.

28           (b) Is not entitled to any payment or reimbursement that is to be made  
29 directly to any taxing authority.

30           (c) Shall not reach or compel distributions to or for the benefit of  
31 the beneficiary of a special needs trust.

32           3. After the death of a settlor, and subject to the settlor's right to  
33 direct the source from which liabilities will be paid, the property of a  
34 trust that was revocable at the settlor's death is subject to claims of the  
35 settlor's creditors, costs of administration of the settlor's estate, the  
36 expenses of the settlor's funeral and disposal of remains and statutory  
37 allowances to a surviving spouse and children to the extent the settlor's  
38 probate estate is inadequate to satisfy those claims, costs, expenses and  
39 allowances, except to the extent that state or federal law exempts any  
40 property of the trust from these claims, costs, expenses or allowances.

41           B. For the purposes of this section:

42           1. During the period the power may be exercised, the holder of a power  
43 of withdrawal is treated in the same manner as the settlor of a revocable  
44 trust to the extent of the property subject to the power.

1           2. On the lapse, release or waiver of a power of withdrawal, the  
2 holder is treated as the settlor of the trust only to the extent the value of  
3 the property affected by the lapse, release or waiver exceeds the greater of  
4 the amount specified in section 2041(b)(2) or 2514(e) of the internal revenue  
5 code, or section 2503(b) of the internal revenue code. On the lapse, release  
6 or waiver of a power of withdrawal in the case of a trust created under  
7 section 2503(c) of the internal revenue code, the holder will not be treated  
8 as the settlor of the trust.

9           C. For the purposes of this section, a trust settled or established by  
10 a corporation, professional corporation, partnership, limited liability  
11 company, governmental entity, trust, foundation or other entity is not deemed  
12 to be settled or established by its directors, officers, shareholders,  
13 partners, members, managers, employees, beneficiaries or agents.

14           D. For the purposes of this section, amounts contributed to a trust by  
15 a corporation, professional corporation, partnership, limited liability  
16 company, governmental entity, trust, foundation or other entity are not  
17 deemed to have been contributed by its directors, officers, shareholders,  
18 partners, employees, beneficiaries or agents. Powers, duties or  
19 responsibilities granted to or reserved by the settlor pursuant to the trust  
20 and any actions or omissions taken pursuant to the trust are deemed to be the  
21 powers, responsibilities, duties, actions or omissions of the settlor and not  
22 those of its directors, officers, shareholders, partners, members, managers,  
23 employees, beneficiaries or agents.

24           ~~E. For the purposes of this section, amounts contributed to an inter~~  
25 ~~vivos marital trust that is treated as qualified terminable interest property~~  
26 ~~under section 2523(f) of the internal revenue code or to an inter vivos~~  
27 ~~marital trust that is treated as a general power of appointment trust under~~  
28 ~~section 2523(e) of the internal revenue code and over which the beneficiary~~  
29 ~~holds a limited power of appointment or a general power of appointment~~  
30 ~~exercisable in favor of the holder's estate, or both, are not deemed to have~~  
31 ~~been contributed by the settlor even if the settlor is a beneficiary of the~~  
32 ~~trust following the death of the beneficiary's spouse.~~

33           E. FOR THE PURPOSES OF THIS SECTION, AMOUNTS AND PROPERTY CONTRIBUTED  
34 TO THE FOLLOWING TRUSTS ARE NOT DEEMED TO HAVE BEEN CONTRIBUTED BY THE  
35 SETTLOR, AND A PERSON WHO WOULD OTHERWISE BE TREATED AS A SETTLOR OR A DEEMED  
36 SETTLOR OF THE FOLLOWING TRUSTS SHALL NOT BE TREATED AS A SETTLOR:

37           1. AN IRREVOCABLE INTER VIVOS MARITAL TRUST THAT IS TREATED AS  
38 QUALIFIED TERMINABLE INTEREST PROPERTY UNDER SECTION 2523(f) OF THE INTERNAL  
39 REVENUE CODE IF THE SETTLOR IS A BENEFICIARY OF THE TRUST AFTER THE DEATH OF  
40 THE SETTLOR'S SPOUSE.

41           2. AN IRREVOCABLE INTER VIVOS MARITAL TRUST THAT IS TREATED AS A  
42 GENERAL POWER OF APPOINTMENT TRUST UNDER SECTION 2523(e) OF THE INTERNAL  
43 REVENUE CODE IF THE SETTLOR IS A BENEFICIARY OF THE TRUST AFTER THE DEATH OF  
44 THE SETTLOR'S SPOUSE.

1           3. AN IRREVOCABLE INTER VIVOS TRUST FOR THE SETTLOR'S SPOUSE THAT DOES  
2 NOT QUALIFY FOR THE GIFT TAX MARITAL DEDUCTION IF THE SETTLOR IS A  
3 BENEFICIARY OF THE TRUST AFTER THE DEATH OF THE SETTLOR'S SPOUSE.

4           4. AN IRREVOCABLE INTER VIVOS TRUST CREATED BY THE SETTLOR'S SPOUSE  
5 FOR THE BENEFIT OF THE SETTLOR, REGARDLESS OF WHETHER OR WHEN THE SETTLOR  
6 ALSO CREATED AN IRREVOCABLE INTER VIVOS TRUST WITH RESPECT TO WHICH SUCH  
7 SPOUSE IS A BENEFICIARY.

8           F. FOR THE PURPOSES OF SUBSECTION E, A PERSON IS A BENEFICIARY WHETHER  
9 SO NAMED UNDER THE INITIAL TRUST INSTRUMENT OR THROUGH THE EXERCISE BY THAT  
10 PERSON'S SPOUSE OR BY ANOTHER PERSON OF A LIMITED OR GENERAL POWER OF  
11 APPOINTMENT.

12          F. G. Subsections C and D do not apply to:

13           1. A trust that has no valid business purpose and that has as its  
14 principal purpose the evasion of the claims of the creditors of the persons  
15 or entities listed in those subsections.

16           2. A trust that would be treated as a grantor trust pursuant to  
17 sections 671 through 679 of the internal revenue code. This paragraph does  
18 not apply to a qualified subchapter S trust that is treated as a grantor  
19 trust solely by application of section 1361(d) of the internal revenue code.

20          Sec. 16. Section 14-10818, Arizona Revised Statutes, is amended to  
21 read:

22          14-10818. Trust protector

23           A. A trust instrument may provide for the appointment of a trust  
24 protector. For the purposes of this section, a person designated with a  
25 status or title, other than that of a beneficiary, with powers similar to  
26 those specified in subsection B is a trust protector, except to the extent  
27 otherwise provided in the trust instrument.

28           B. A trust protector appointed by the trust instrument has the powers,  
29 delegations and functions conferred on the trust protector by the trust  
30 instrument, ~~including~~. THESE POWERS, DELEGATIONS AND FUNCTIONS MAY INCLUDE  
31 the following:

32           1. Remove and appoint a trustee.

33           2. Modify or amend the trust instrument for any valid purpose or  
34 reason, including, without limitation, to achieve favorable tax status or to  
35 respond to changes in the internal revenue code or state law, or the rulings  
36 and regulations under that code or law.

37           3. Increase, decrease, modify or restrict the interests of any  
38 beneficiary of the trust.

39           4. Modify the terms of a power of appointment granted by the trust.

40           5. Change the applicable law governing the trust.

41           C. Except to the extent otherwise specifically provided in the trust  
42 instrument, a modification authorized under subsection B may not:

43           1. Grant a beneficial interest to an individual or a class of  
44 individuals unless the individual or class of individuals is specifically  
45 provided for under the trust instrument.

1           2. Modify the beneficial interest of a governmental unit in a special  
2 needs trust.

3           D. Any provision of this title to the contrary, but except to the  
4 extent otherwise provided by the trust instrument, a trust protector is not a  
5 trustee or fiduciary and is not liable or accountable as a trustee or  
6 fiduciary because of an act or omission of the trust protector when  
7 performing or failing to perform the duties of a trust protector under the  
8 trust instrument. This subsection does not apply to trusts that become  
9 irrevocable before ~~the effective date of this section~~. JANUARY 1, 2009 IF THE  
10 TRUST INSTRUMENT ALLOWS THE SETTLOR TO REMOVE AND REPLACE THE TRUST  
11 PROTECTOR.

12           Sec. 17. Title 14, chapter 11, article 8, Arizona Revised Statutes, is  
13 amended by adding section 14-10819, to read:

14           14-10819. Trustee's special power to appoint to other trust

15           A. UNLESS THE TERMS OF THE INSTRUMENT EXPRESSLY PROVIDE OTHERWISE, A  
16 TRUSTEE WHO HAS THE DISCRETION UNDER THE TERMS OF A TESTAMENTARY INSTRUMENT  
17 OR IRREVOCABLE INTER VIVOS AGREEMENT TO MAKE DISTRIBUTIONS, REGARDLESS OF  
18 WHETHER A STANDARD IS PROVIDED IN THE INSTRUMENT OR AGREEMENT, FOR THE  
19 BENEFIT OF A BENEFICIARY OF THE TRUST MAY EXERCISE WITHOUT PRIOR COURT  
20 APPROVAL THE TRUSTEE'S DISCRETION BY APPOINTING PART OR ALL OF THE ESTATE  
21 TRUST IN FAVOR OF A TRUSTEE OF A TRUST UNDER AN INSTRUMENT OTHER THAN THAT  
22 UNDER WHICH THE POWER TO MAKE DISTRIBUTIONS WAS CREATED IF THE EXERCISE OF  
23 THIS DISCRETION:

24           1. DOES NOT REDUCE ANY FIXED NONDISCRETIONARY INCOME PAYMENT TO A  
25 BENEFICIARY.

26           2. DOES NOT ALTER ANY NONDISCRETIONARY ANNUITY OR UNITRUST PAYMENT TO  
27 A BENEFICIARY.

28           3. IS IN FAVOR OF THE BENEFICIARIES OF THE TRUST.

29           4. RESULTS IN ANY ASCERTAINABLE STANDARD APPLICABLE FOR DISTRIBUTIONS  
30 FROM THE TRUST BEING THE SAME OR MORE RESTRICTIVE STANDARD APPLICABLE FOR  
31 DISTRIBUTIONS FROM THE RECIPIENT TRUST WHEN THE TRUSTEE EXERCISING THE POWER  
32 DESCRIBED IN THIS SUBSECTION IS A POSSIBLE BENEFICIARY UNDER THE STANDARD.

33           5. DOES NOT ADVERSELY AFFECT THE TAX TREATMENT OF THE TRUST, THE  
34 TRUSTEE, THE SETTLOR OR THE BENEFICIARIES.

35           6. DOES NOT VIOLATE THE LIMITATIONS ON VALIDITY UNDER SECTIONS 14-2901  
36 AND 14-2905.

37           B. THIS SECTION APPLIES TO A TRUST GOVERNED BY THE LAWS OF THIS STATE,  
38 INCLUDING A TRUST WHOSE GOVERNING JURISDICTION IS TRANSFERRED TO THIS STATE.

39           C. THE EXERCISE OF THE POWER TO INVADE THE PRINCIPAL OF A TRUST UNDER  
40 SUBSECTION A OF THIS SECTION IS CONSIDERED TO BE THE EXERCISE OF A SPECIAL  
41 POWER OF APPOINTMENT.

42           D. THE TRUSTEE, IN THE TRUSTEE'S SOLE DISCRETION, PRIOR TO OR AFTER  
43 THE EXERCISE OF THE TRUSTEE'S DISCRETION UNDER THIS SECTION, MAY REQUEST THE  
44 COURT TO APPROVE THE EXERCISE.

1           Sec. 18. Section 14-11003, Arizona Revised Statutes, is amended to  
2 read:

3           14-11003. Damages in absence of breach

4           A. Except as provided in section 14-7404, a trustee is accountable to  
5 an affected beneficiary for any profit made by the trustee arising from the  
6 administration of the trust, even absent a breach of trust. FOR THE PURPOSES  
7 OF THIS SUBSECTION, PROFIT DOES NOT INCLUDE:

8           1. REASONABLE COMPENSATION TO WHICH THE TRUSTEE IS ENTITLED PURSUANT  
9 TO SECTION 14-10708.

10           2. COMPENSATION OR FEES PERMITTED PURSUANT TO SECTION 14-10802.

11           3. REASONABLE FEES OR COMPENSATION FOR SERVICES RENDERED THAT THE  
12 TRUSTEE OR AN AFFILIATE CUSTOMARILY PROVIDES IN THE NORMAL COURSE OF BUSINESS  
13 AND THAT ARE TYPICAL IN THE GEOGRAPHIC AREA WHERE THE TRUST IS ADMINISTERED.

14           4. REASONABLE REMUNERATION FOR SERVICES PERMITTED PURSUANT TO SECTION  
15 6-246.

16           B. Absent a breach of trust, a trustee is not liable to a beneficiary  
17 for a loss or depreciation in the value of trust property or for not having  
18 made a profit.

19           Sec. 19. Title 14, chapter 11, article 10, Arizona Revised Statutes,  
20 is amended by adding section 14-11015, to read:

21           14-11015. Express total return unitrusts; definition

22           A. A UNITRUST AMOUNT MAY BE DETERMINED BY REFERENCE TO THE NET FAIR  
23 MARKET VALUE OF THE TRUST'S ASSETS IN ONE YEAR OR MORE THAN ONE YEAR.

24           B. DISTRIBUTION OF A FIXED PERCENTAGE UNITRUST AMOUNT IS CONSIDERED A  
25 DISTRIBUTION OF ALL OF THE INCOME OF THE TOTAL RETURN UNITRUST AND IS NOT A  
26 FUNDAMENTAL DEPARTURE FROM APPLICABLE STATE LAW, REGARDLESS OF WHETHER THE  
27 TOTAL RETURN UNITRUST IS CREATED AND GOVERNED PURSUANT TO SECTION 14-11014 OR  
28 BY THE TERMS OF THE GOVERNING INSTRUMENT.

29           C. AN EXPRESS TOTAL RETURN UNITRUST MAY PROVIDE A MECHANISM FOR  
30 CHANGING THE UNITRUST PERCENTAGE SIMILAR TO THE MECHANISM PROVIDED UNDER  
31 SECTION 14-11014 BASED ON THE FACTORS PRESCRIBED IN THAT SECTION AND MAY  
32 PROVIDE FOR A CHANGE FROM A UNITRUST TO AN INCOME TRUST SIMILAR TO THE  
33 MECHANISM PRESCRIBED PURSUANT TO SECTION 14-11014.

34           D. IF AN EXPRESS TOTAL RETURN UNITRUST DOES NOT SPECIFICALLY OR BY  
35 REFERENCE TO SECTION 14 11014 GRANT A POWER TO CHANGE THE UNITRUST PERCENTAGE  
36 OR CHANGE TO AN INCOME TRUST, THE TRUSTEE SHALL HAVE NO SUCH POWER.

37           E. A DISTRIBUTION OF THE FIXED PERCENTAGE OF NOT LESS THAN THREE PER  
38 CENT NOR MORE THAN FIVE PER CENT REASONABLY APPORTIONS THE TOTAL RETURN OF A  
39 TOTAL RETURN UNITRUST.

40           F. AN EXPRESS TOTAL RETURN UNITRUST THAT PROVIDES FOR A FIXED  
41 PERCENTAGE PAYOUT IN EXCESS OF FIVE PER CENT PER YEAR IS CONSIDERED TO HAVE  
42 PAID OUT ALL OF THE INCOME OF THE TOTAL RETURN UNITRUST AND TO HAVE PAID OUT  
43 PRINCIPAL OF THE TRUST TO THE EXTENT THAT THE FIXED PERCENTAGE PAYOUT EXCEEDS  
44 FIVE PER CENT PER YEAR.

1 G. THE TRUST DOCUMENT MAY GRANT DISCRETION TO THE TRUSTEE TO ADOPT A  
2 CONSISTENT PRACTICE OF TREATING CAPITAL GAINS AS PART OF THE UNITRUST  
3 DISTRIBUTION, TO THE EXTENT THAT THE UNITRUST DISTRIBUTION EXCEEDS THE NET  
4 ACCOUNTING INCOME, OR IT MAY SPECIFY THE ORDERING OF THESE CLASSES OF INCOME.

5 H. UNLESS THE TERMS OF THE TRUST SPECIFICALLY PROVIDE OTHERWISE, A  
6 DISTRIBUTION OF THE UNITRUST AMOUNT IS CONSIDERED TO HAVE BEEN MADE FROM THE  
7 FOLLOWING SOURCES IN ORDER OF PRIORITY:

8 1. FROM NET ACCOUNTING INCOME DETERMINED AS IF THE TRUST WERE NOT A  
9 UNITRUST.

10 2. FROM ORDINARY INCOME NOT ALLOCABLE TO NET ACCOUNTING INCOME.

11 3. FROM NET REALIZED SHORT-TERM CAPITAL GAINS.

12 4. FROM NET REALIZED LONG-TERM CAPITAL GAINS.

13 5. FROM THE PRINCIPAL OF THE TRUST ESTATE.

14 I. THE TRUST DOCUMENT MAY PROVIDE THAT ASSETS USED BY THE TRUST  
15 BENEFICIARY, SUCH AS A RESIDENCE PROPERTY OR TANGIBLE PERSONAL PROPERTY, MAY  
16 BE EXCLUDED FROM THE NET FAIR MARKET VALUE FOR COMPUTING THE UNITRUST AMOUNT.  
17 THIS USE MAY BE CONSIDERED EQUIVALENT TO THE INCOME OR UNITRUST AMOUNT.

18 J. FOR THE PURPOSES OF THIS SECTION, "EXPRESS TOTAL RETURN UNITRUST"  
19 MEANS A TRUST THAT BY ITS GOVERNING INSTRUMENT REQUIRES THE DISTRIBUTION AT  
20 LEAST ANNUALLY OF A UNITRUST AMOUNT EQUAL TO A FIXED PERCENTAGE OF NOT LESS  
21 THAN THREE NOR MORE THAN FIVE PER CENT PER YEAR OF THE NET FAIR MARKET VALUE  
22 OF THE TRUST'S ASSETS, VALUED AT LEAST ANNUALLY.

23 Sec. 20. Section 25-213, Arizona Revised Statutes, is amended to read:

24 25-213. Separate property

25 A. A spouse's real and personal property that is owned by that spouse  
26 before marriage and that is acquired by that spouse during the marriage by  
27 gift, devise or descent, and the increase, rents, issues and profits of that  
28 property, is the separate property of that spouse.

29 B. Property that is acquired by a spouse after service of a petition  
30 for dissolution of marriage, legal separation or annulment is also the  
31 separate property of that spouse if the petition results in a decree of  
32 dissolution of marriage, legal separation or annulment.

33 C. Notwithstanding subsection B of this section and section 25-214,  
34 subsection C, a mortgage or deed of trust executed by a spouse who acquires  
35 the real property encumbered by that mortgage or deed of trust after service  
36 of a petition for dissolution of marriage, legal separation or annulment  
37 shall be enforceable against the real property if the petition does not  
38 result in a decree of dissolution of marriage, legal separation or annulment.

39 D. A CONTRIBUTION TO AN IRREVOCABLE TRUST THAT HAS AS ITS PRINCIPAL  
40 ASSET LIFE INSURANCE ON THE PERSON MAKING THE CONTRIBUTION IS A CONTRIBUTION  
41 OF THE INSURED'S SEPARATE PROPERTY IF THE SPOUSE OF THE INSURED IS THE  
42 PRIMARY BENEFICIARY OF THE TRUST.

APPROVED BY THE GOVERNOR JULY 10, 2009.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 10, 2009.